

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-218491.2

**DATE:** September 23, 1985

**MATTER OF:** Pose, Inc.

**DIGEST:**

1. Under 4 C.F.R. § 21.1(d) (1985) of our Bid Protest Regulations, a protest may be dismissed where the protester fails to furnish a copy of the protest to the contracting officer not later than 1 day after the protest is filed with GAO. However, dismissal of the protest is not required where the record shows that the protester timely furnished a copy of its protest to the address of the contracting officer, but that the letter was rejected and returned to the protester.
2. Where there are no adequate specifications to determine whether address labels can be used with an address label printer, procuring activity properly may require bid samples.

Pose, Inc., protests the requirement for bid samples under solicitation No. 0000-520027, a total small business set-aside issued by the Department of State for an indefinite quantity of address labels. Pose argues that this requirement is unduly restrictive of competition.

We deny the protest.

By notice of April 23, 1985, B-218491.1, we dismissed Pose's protest for failure to comply with 4 C.F.R. § 21.1(d) (1985) of our Bid Protest Regulations, which requires that a copy of the protest be furnished to the contracting agency not later than 1 day after it is filed with GAO. Pose subsequently furnished evidence indicating that it had sent a copy of the protest by certified mail to the contracting officer's address, that it arrived at that address prior to receipt of the protest by our Office, but that the letter had been refused and returned to the protester. We reopened the file and requested a report on the protest from the agency.

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The State Department argues that Pose's protest properly was dismissed for failure to comply with 4 C.F.R. § 21.1(d) (1985). The State Department also asserts that, if our Office reverses its dismissal of the protest, the protest should be denied because the agency had a reasonable basis for the bid sample requirement.

The State Department argues that Pose failed to address the copy of the protest in accordance with instructions set forth in the solicitation and thus Pose was responsible for the untimely receipt of the protest. The State Department cites as analogous our decision in ISS Energy Services Inc., B-216030, Aug. 27, 1984, 84-2 C.P.D. ¶ 230. In that case, we refused to consider a protest which was untimely filed with our Office because the protester misaddressed the protest. However, the holding in ISS Energy, B-216030, supra, is inapplicable here because Pose's protest was not misaddressed.

Our Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1985), provide, in pertinent part, that:

"The protester shall furnish a copy of the protest . . . to the individual or location designated by the contracting agency in the solicitation for receipt of protests. If there is no designation in the solicitation, the protester shall furnish a copy of the protest to the contracting officer . . . ."

The State Department solicitation did not designate an individual or location for receipt of protests, but only provided addresses for submission of bids. In the absence of a designated location in the solicitation for submission of a copy of the protest, the copy of the protest properly was sent to the address where the contracting officer was located. The letter arrived timely, but was refused. Thus, Pose complied with the filing requirements of 4 C.F.R. § 21.1 (1985) but, for reasons beyond the protester's control, the contracting officer did not timely receive the copy of the protest. The contracting officer subsequently received a copy of the protest. We reopened the case and, at our request, the contracting officer filed a report. Under these circumstances, we will consider Pose's protest on the merits.

Pose challenges the bid sample requirement as unduly restrictive of competition since it would require Pose to

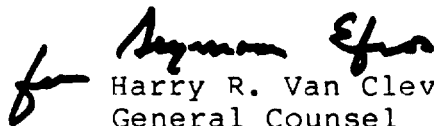
purchase a special-shaped die cutting tool costing \$500. Pose asserts that only firms that have supplied this product to the government previously will be able to supply a sample, and that it is economically unfeasible for Pose to supply a sample without assurance of a contract. Pose also contends that the agency's needs could be met without requiring samples before award.

The State Department reports that it has an automated passport issuance system called the Travel Document Issuance System (TDIS) at eight passport agencies in the United States. A final step in the passport preparation process is the printing of a mailing label with the name and address of the passport applicant. The TDIS uses an address label printer which automatically prints the address on the mailing labels. The first labels used by the passport agencies were purchased as part of the TDIS system from the contractor who developed the system. When the State Department began to purchase labels from sources other than the original supplier, the State Department experienced problems with the machine's operation. The machine automatically feeds labels to the printer mechanism and, by use of a light sensor stops when the label is in the proper position for printing. However, the State Department found that the light sensor could not "read" certain labels and the labels were not feeding into the machine. Also the State Department found that the other labels did not feed through the machine automatically and that the machine was jamming. The State Department believes that the jamming was caused by incompatible adhesive or label stock thickness or a combination of these label features. The State Department reports that it attempted to work with the vendors to remedy the problem. It developed specifications listing all the known salient characteristics of the labels that had been used successfully in the printer. However, according to the agency, the specifications could not ensure that the labels would dispense from the printer without jamming. The State Department concluded that the only way to determine if the labels met this requirement was to test bid samples.

The use of bid samples is authorized by the Federal Acquisition Regulation, 48 C.F.R. § 14.202-4 (1984), and has been sanctioned by our Office where, as in this case, it is determined that the specifications are not sufficiently definite to allow a determination that an item offered will meet the government's minimum needs without samples. See Magnaco Industries, B-216211, Jan. 31, 1985, 85-1 C.P.D. ¶ 122.

In the present case, bid samples were required because the State Department could not draft adequate specifications to ensure that the address labels would work in the address label printer. Other than to assert that its labels and those of other vendors should work in any printer, the protester has failed to meet its burden of showing why the sample requirement is unreasonable. Moreover, we note that seven bids were received from small businesses under this solicitation, which strongly indicates that this requirement was not an unreasonable restriction on competition. Galaxy Custodial Services, Inc., et al., B-215738, et al., June 10, 1985, 64 Comp. Gen. \_\_\_, 85-1 ¶ 658. Finally, we think the government in these circumstances should not have to assume the risk of contracting for an unacceptable product if bid samples are not required before award. See Magnaco Industries, B-216211, supra. Based on this record, we do not find that the requirement for bid samples was unreasonable.

We deny the protest.

  
Harry R. Van Cleve  
General Counsel